IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 34543 of 2002(K)

PETITIONER:

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1. V.R.MANOJ KUMAR,
   S/O.V.S.RAMAKRISHNA PILLAI,
   VADAKKEDATH HOUSE, THADIKKADAVU P.O.,
   VELLAD VILLAGE, TALIPARAMBA TALUK.

2. M.K.JOSEPH, S/O.KURIAN, MANNOR HOUSE,
   ALAKKODE AMSOM, NELLIPARA P.O.,
   TALIPARAMBA TALUK.

3. VALSAMMA, D/O.VARKEY, VARAVAKKAL
   HOUSE, ALAKKODE AMSOM, ALAKKODE VILLAGE,
   THABORE P.O., TALIPARAMBA TALUK.

4. ANEESH, S/O.CHINNAMMA KUDILIL,
   ANEESH BHAVAN, ALAKKODE ARANGOM,
   ALAKKODE VILLAGE, ALAKKODE P.O.,
   TALIPARAMBA TALUK.

5. GEORGE JOSEPH S/O.JOSEPH,
   KIZHAKKETHARAPPEL, ALAKKODE ARANGOM,
   UDAYAGIRI.P.O., TALIPARAMBA TALUK.

6. JOJI MATHEW, S/O.MATHEW,
   MANNIKKATTUMAYIL, ALAKKODE,
   ARANGOM, ALAKKODE VILLAGE,
   THERTHALLY P.O., TALIPARAMBA TALUK.

7. SMT.SHYLA, D/O.MATHEW, KUNNIKKATTU
   MALAYIL HOUSE, ALAKKODE ARANGOM, ALAKKODE VILLAGE,
   THERTHALLY P.O., TALIPARAMBA TALUK.

8. VANAJA W/O.GOPI,
   PALARANALPARAMBA, ARANGOM, ALAKKODE,
   TALIPARAMBA TALUK.

BY ADV. SRI.M.A.FIROZ
SRI.SERGI JOSEPH THOMAS

RESPONDENTS:
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1. STATE OF KERALA, REP. BY ITS SECRETARY
   TAXES (G) DEPARTMENT, GOVT. OF KERALA,
   TRIVANDRUM.

2. THE EXCISE COMMISSIONER,
   COMMISSIONERATE OF EXCISE,
   TRIVANDRUM.

3. THE DISTRICT COLLECTOR, KANUR.

4. THE ASSISTANT EXCISE COMMISSIONER,
   KANNUR.

5. CIRCLE INSPECTOR OF EXCISE,
   TALIPARAMBA, KANNUR.

6. THE TODDY WORKERS, WELFARE FUND
   INSPECTOR, KANNUR.

7. TALIPARAMBA TALUK CHETHU THOZHILALI
   UNION (CITU) REP. BY ITS PRESIDENT,
   TALIPARAMBA, KANNUR DISTRICT.

R1 TO R5 BY G.P. SMT. R. BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 58443 OF 2002 IN OP 34543 OF 2002

DISMISSED

16.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER DATED 15.3.2002 ISSUED BY THE 6TH RESPONDENT.

EXT.P2 TRUE COPY OF THE ORDER DATED 25.4.2002 PASSED BY THE 3RD RESPONDENT.

EXT.P3 TRUE COPY OF THE ORDER G.O. (RT) NO. 348/02 TD DATED 1.7.2002

EXT.P4 TRUE COPY OF THE JUDGMENT DATED 30.5.2002 IN OP 12536 OF 2002

EXT.P5 TRUE COPY OF THE JUDGMENT DATED 5.7.2002 IN W.A. NO. 1497 OF 2002

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 34543 OF 2002

Dated this the 16th day of March, 2007

JUDGMENT

Petitioners participated in Toddy Shop auctions held in 2002. In order to establish eligibility for participation in the auctions, petitioners obtained experience certificate from Welfare Fund Inspectorate and produced the same. Even though the District Collector accepted the certificates and recommended for grant of licence to the petitioners, the Excise Commissioner declined to confirm grant of licence for the reason that experience certificates were either bogus or fabricated. The commissioner's order was confirmed by the Government and consequently petitioners did not get licence. However, payments made by the petitioners were not refunded by respondents. The prayer in the O.P. is for direction to the respondents to refund the amount. While Government Pleader submitted that Rule 5(17) of the Kerala Abkari Shops (Disposal in Auction) Rules 2002 authorises forfeiture of all amounts paid, and any privilege of benefit derived by suppression of fact or through production of fake documents are liable for forfeiture,

counsel for the petitioners contended that Rule 5(17) provides for forfeiture only if the licence was obtained by dubious methods referred to therein. Since no authority has considered the claim of the petitioners for refund, I feel it would not be appropriate for this Court to adjudicate the matter first in writ proceedings. Accordingly, O.P. is disposed of with direction to the Excise Commissioner to consider the claim of petitioners for refund with specific reference to Rule 5(17) of the Rules and pass orders after hearing the petitioners within a period of two months from the date of production of a copy of this judgment by the petitioners. Since petitioners have a case that similar certificates issued in other ranges have been accepted and licences were granted, the Excise Commissioner will consider the legality of declining licences to the petitioners which will have a bearing on the claim for refund.

(C.N.RAMACHANDRAN NAIR)
Judge